

Exhibit F

MULTI-DISTRICT LITIGATION

IN RE: GOLD KING MINE RELEASE IN SAN
JUAN COUNTY, COLORADO, ON AUGUST 5,
2015.

NO: 1:18-MD-02824-WJ

TELEPHONIC HEARING AND STATUS CONFERENCE PURSUANT TO
RULE 16(c)(2)(F) and (L)
November 13, 2019
12:00 p.m.
421 Gold, Southwest
Albuquerque, New Mexico

BEFORE: HONORABLE ALAN C. TORGERSON, SPECIAL MASTER

REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69
Bean & Associates, Inc.
Professional Court Reporting Service
201 Third Street, Northwest, Suite 1630
Albuquerque, New Mexico 87102

(3090N) MAS

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1 orange river.

2 SPECIAL MASTER TORGERSON: Let me stop
3 you. Let me stop you. Because I understand all
4 that and I understand why somebody ought to be able
5 to make a claim for these damages. But why isn't it
6 the State of New Mexico, rather than the State of
7 New Mexico Environmental Department?

8 MR. GILMOUR: Because it was an
9 environmental disaster, the agency is the one
10 identified by the State to be in charge of
11 remediation, restoration, and any and all damages
12 that flow from that. If you look at the enabling
13 statute that the United States cited, the very first
14 part says, "The department shall have the power to,
15 A, sue and be sued."

16 SPECIAL MASTER TORGERSON: Yes.

17 MR. GILMOUR: And the final statement
18 there is in subsection I which says, "Have such
19 other powers as may be necessary and appropriate to
20 the exercise of the powers and duties delegated to
21 the department." And this has been put within the
22 purview of the department.

23 SPECIAL MASTER TORGERSON: Okay. Well,
24 I'm probably getting into an area that's way above
25 my pay grade, but I don't quite understand it. And

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1 to tax my now 74-year-old mind.

2 MR. GILMOUR: Yes, Your Honor.

3 SPECIAL MASTER TORGERSON: I still don't
4 see the -- I see the connection, but I don't see --
5 so you're saying, well, "We'll give you what we have
6 and we'll ask these other agencies that we can't
7 force to do anything to give us documents. And if
8 they say they will, we'll do that pursuant to a
9 memorandum of understanding."

10 But what if somebody says, "No, we're not
11 going to give you the documents"? Or what if the
12 Federal Defendants say, "We're not satisfied with
13 that response"? Then what do they do?

14 MR. GILMOUR: Then, Your Honor -- and I
15 don't think we would get to that point. But
16 assuming for purposes of discussion that that
17 happens, then they would be perfectly entitled to
18 serve a subpoena upon that agency.

19 SPECIAL MASTER TORGERSON: Okay. Well,
20 that would be my solution, but it seemed to be
21 unnecessary if we can get cooperation. All right.
22 Let's try to get beyond that. And let's talk about
23 the scope of these requests. And let's set aside
24 for a moment whether I agree or disagree with you
25 about whether these kinds of requests, which are

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1 then it gets more complicated when you say, "Well,
2 even though we're making all these claims on behalf
3 of all these other departments, we don't have to
4 produce any documents because they're not in our
5 custody and control or possession." So you can't
6 have it both ways. If you're acting on behalf of
7 these other agencies, you're acting on behalf of
8 these other agencies in the state. I just think
9 it's a double standard.

10 MR. GILMOUR: Your Honor, if I might
11 respond, we are not saying that we are not producing
12 these documents. In fact, as I stated previously on
13 the October 31st conference that we had, this is
14 extremely premature by the United States, and I have
15 no idea why they have raised this issue. We have
16 told them, and it's even in the letter confirming
17 our meet and confer, that we will produce all of
18 this information to the extent that we have it. And
19 to the extent that we don't, we are willing to go to
20 the agencies and try and collect it from them. But
21 the United States' position has been that we can
22 somehow compel those agencies to produce the
23 information if they refuse.

24 SPECIAL MASTER TORGERSON: So stop, stop,
25 stop, stop, stop. Don't go too far. You're going

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1 really asking about information with respect to your
2 claim for damages, are premature because I have my
3 own thoughts about that. But let's assume for
4 purposes of this discussion that these requests are
5 not premature. What is it that you think you can
6 produce or are willing to produce in response to
7 these requests? And what is it about the requests
8 that -- I agree they're broad, but is there some way
9 that we can agree in some manner, at some point, how
10 these documents are going to be produced? Have you
11 thought about that?

12 MR. GILMOUR: Yes, I have, Your Honor, and
13 I think that as an initial starting point, I agree
14 that they are entitled to information on our
15 damages, and in these areas that they have
16 identified, such as taxation and tourism, we are
17 willing to produce those and are in the process of
18 doing that. I think that asking for the past 15
19 years' worth of data is excessive and unduly
20 burdensome. I think an appropriate baseline would
21 be for the five years prior to the release, and we
22 are willing -- and in the process of getting that
23 information, which with the information going
24 forward beyond the 2015 release, by the time we get
25 into discovery next year, that will give them five

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1 UNITED STATES OF AMERICA
2 STATE OF NEW MEXICO
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4 REPORTER'S CERTIFICATE

5 I, Mary Abernathy Seal, RDR, CRR, CCR, do
6 hereby certify that the foregoing pages constitute a
7 true transcript of proceedings had before the said
8 Court held in the City of Albuquerque, New Mexico,
9 in the matter therein stated.

10 In testimony whereof, I have hereunto set my
11 hand on this 15th day of November, 2019.
12

13
14 Mary Abernathy Seal, RDR, CRR, CCR
15 BEAN & ASSOCIATES, INC.
16 NM Certified Court Reporter #69
17 License expires: 12/31/19

18 Date taken: November 13, 2019
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